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LEXINGTON LAW GROUP
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Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

ECOLAB USA, INC., et al.,

Defendants.

Case No. CGC-24-619214

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT ECOLAB USA,
INC.**

1 **1. INTRODUCTION**

2 1.1 The parties to this Consent Judgment (“Parties”) are the Center for
3 Environmental Health (“CEH”) and Defendant Ecolab USA, Inc. (“Settling Defendant”). CEH
4 and Settling Defendant are referred to collectively as the “Parties.”

5 1.2 CEH alleges that Settling Defendant is a corporation that employs ten (10) or
6 more persons and that manufactures, distributes, and/or sells shampoo that contains 1,4-Dioxane
7 in the State of California or have done so in the past.

8 1.3 On March 7, 2024 CEH served a 60-Day Notice of Violation under
9 Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
10 & Safety Code §§ 25249.5, *et seq.*) (“Notice”) to Settling Defendant, the California Attorney
11 General, the District Attorneys of every County in the State of California, and the City Attorneys
12 for every City in the State of California with a population greater than 750,000. The Notice
13 alleges violations of Proposition 65 with respect to the presence of 1,4-Dioxane in shampoo that
14 is distributed and/or sold by Settling Defendant.

15 1.4 On October 24, 2024, CEH filed the above-captioned action in the Superior
16 Court of California for San Francisco County, naming Settling Defendant as a defendant in this
17 action.

18 1.5 For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
19 Court has jurisdiction over the allegations of violations contained in the operative Complaint in
20 the above-captioned action (“Complaint”) and personal jurisdiction over Settling Defendant as to
21 the acts alleged in the Complaint; (ii) venue is proper in the County of San Francisco; and (iii)
22 this Court has jurisdiction to enter this Consent Judgment.

23 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by
24 the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance
25 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
26 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
27 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and

1 is accepted by the Parties for purposes of settling, compromising, and resolving issues disputed in
2 this action.

3 **2. DEFINITIONS**

4 2.1 “Compliance Date” means the date that is twelve months following the
5 Effective Date.

6 2.2 “Covered Products” means shampoo manufactured, distributed, and/or sold by
7 Settling Defendant in California.

8 2.3 “Effective Date” means the date on notice of entry of this Consent Judgment
9 by the Court is served on Settling Defendant.

10 2.4 “Optional Lower Reformulation Level” means 3 parts per million (“ppm”)
11 1,4-Dioxane.

12 2.5 “Reformulation Level” means 10 ppm 1,4-Dioxane.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Reformulation of Covered Products.** On and after the Compliance Date,
15 Settling Defendant shall not manufacture, distribute, sell, or offer for sale in California any
16 Covered Product that contains 1,4-Dioxane in excess of the Reformulation Level as determined
17 using Headspace Gas Chromatography/Mass Spectrometry, or similar method agreed upon by the
18 Parties to this Consent Judgment, except as provided in Section 3.2.

19 3.2 **Sell-Through for Existing Inventory.** The reformulation requirements of
20 Sections 3.1 and 3.3 shall not apply to Covered Products that Settling Defendant had purchased or
21 manufactured prior to the Compliance Date, including but not limited to Covered Products in
22 distribution centers, in inventory, or at retail locations.

23 3.3 **Optional Lower Reformulation Level.** Should Settling Defendant elect to
24 comply with the Optional Lower Reformulation Level, it shall inform CEH of such election upon
25 execution of this Consent Judgment and shall comply with the provisions of this section and
26 subsection in lieu of Section 3.1 above and make the reduced Settlement Payment as set forth on
27 Exhibit A.

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1 3.3.1 **Optional Lower Reformulation Level Requirements.** On and after the
2 Compliance Date, if Settling Defendant chooses to comply with the Optional Lower
3 Reformulation Level, it shall not manufacture, distribute, sell, or offer for sale in California any
4 Covered Product that contains 1,4-Dioxane in excess of the Optional Lower Reformulation Level
5 as determined using Headspace Gas Chromatography/Mass Spectrometry, or similar method
6 agreed upon by the Parties to this Consent Judgment, except as provided in Section 3.2.

7 3.3.2 In the event that Settling Defendant chooses to comply with the Optional
8 Lower Reformulation Level and is unable to do so, it may notify CEH on or before the
9 Compliance Date and make a payment equal to the difference between the payment for the
10 Reformulation Level and Optional Lower Reformulation Level as set forth on Exhibit A. The
11 additional payment shall be paid and delivered in accordance with the provisions of Section 5.1
12 within 15 days following the Compliance Date.

13 **4. ENFORCEMENT**

14 4.1 CEH may, by motion or application for an order to show cause before the
15 Superior Court of the County of San Francisco, enforce the terms and conditions contained in this
16 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
17 Section 3 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth
18 the basis for the alleged violation, including, at a minimum, an analytical report demonstrating
19 1,4-Dioxane content above the applicable standard set forth in Section 3. The Parties shall then
20 meet and confer regarding the basis for CEH's anticipated motion or application in an attempt to
21 resolve it informally. Should such attempts at meeting and conferring fail, after 30 days from
22 CEH's delivery of the aforementioned Notice of Violation CEH may file its enforcement motion
23 or application. In ruling on any motion to enforce the terms of this Section, the Court may, in
24 addition to ordering compliance with the terms of this Consent Judgment, employ such remedies
25 as necessary to ensure compliance with Proposition 65 including, but not limited to, requiring
26 Settling Defendant to provide warnings. Should CEH prevail on any motion or application to
27 enforce a material violation of this Consent Judgment under this Section, CEH shall be entitled to
28 its reasonable attorneys' fees and costs incurred as a result of such motion or application. Should

1 Settling Defendant prevail on any motion or application under this Section, Settling Defendant
2 may be awarded its reasonable attorneys' fees and costs as a result of such motion or application
3 upon a finding by the court that CEH's prosecution of the motion or application was not in good
4 faith. Notwithstanding any of the above, upon CEH's first motion or application to enforce the
5 requirements of Section 3 above, Settling Defendants' monetary liability and CEH's total
6 monetary recovery shall be limited to its reasonable attorneys' fees and costs incurred as a result
7 of a such motion or application, and CEH shall not seek to impose a civil penalty on Settling
8 Defendant.

9 **5. PAYMENTS**

10 5.1 **Total Settlement Payment.** Within fifteen (15) days of the Effective Date,
11 Settling Defendant shall pay the total settlement amount as described in Exhibit A. As set forth
12 therein, the total settlement amount for Settling Defendant shall be paid in five separate checks in
13 the amounts specified on Exhibit A for Settling Defendant and delivered as set forth
14 below. Unless excused by Force Majeure or exceptional circumstances reasonably beyond the
15 control of Settling Defendant, any failure by Settling Defendant to comply with the payment
16 terms herein shall be subject to a stipulated late fee to be paid by Settling Defendant in the
17 amount of \$100 for each day the full payment is not received after the applicable payment due
18 date set forth above. The late fees required under this Section shall be recoverable, together with
19 reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this
20 Consent Judgment. The Settlement Payment shall be divided as among the following:

21 5.1.1 A civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil
22 penalty shall be apportioned in accordance with Health & Safety Code §25249.12 (25% to CEH
23 and 75% to the State of California's Office of Environmental Health Hazard Assessment
24 ("OEHHA")). This payment shall be delivered as follows:

25 For United States Postal Service Delivery:

26 Attn: Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B

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Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.1.2 An Additional Settlement Payment (“ASP”) in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including 1,4-Dioxane, in personal care products. CEH may also use a portion of such funds to monitor compliance with this Consent Judgment and to purchase and test Settling Defendant’s products to confirm compliance. CEH shall obtain and maintain adequate records to document that ASPs are spent on these activities and CEH agrees to provide such documentation to the Attorney General within thirty days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.1.3 A reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks with a portion payable to the Lexington Law Group, LLP and associated with taxpayer identification number 88-4399775; and the remainder payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

1 5.2 If Settling Defendant is unable to comply with the Optional Lower
2 Reformulation Level, Settling Defendant shall make an additional payment of \$10,000 to be split
3 between a civil penalty and ASP as set forth in Exhibit A. Of the additional payment, \$5,000 shall
4 be a civil penalty, apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH
5 and 75% to the State of California’s Office of Environmental Health Hazard Assessment
6 (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment of \$3,750 shall be
7 made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to
8 the OEHHA address set forth in section 5.1.1 above. The CEH portion of the additional civil
9 penalty payment of \$1,250 shall be made payable to the Center for Environmental Health and
10 associated with taxpayer identification number 94-3251981. \$1,500 of the additional payment shall
11 be made payable to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117 for
12 fees and costs associated with the additional payment. The remaining \$3,500 of the additional
13 payment shall be made payable to the Center for Environmental Health and associated with
14 taxpayer identification number 94-3251981 and shall be used as set forth in Section 5.1.2 above.
15 Both payments to CEH shall be delivered to Lexington Law Group, 503 Divisadero Street, San
16 Francisco, CA 94117.

17 **6. MODIFICATION**

18 6.1 **Written Consent.** This Consent Judgment may be modified from time to
19 time by express written agreement of the Parties with the approval of the Court, or by an order of
20 this Court upon motion and in accordance with law.

21 6.2 **Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
22 provide notice to and attempt in good faith to meet and confer with all affected Parties prior to
23 filing a motion to modify the Consent Judgment.

24 **7. CLAIMS COVERED AND RELEASED**

25 7.1 Provided that Settling Defendant complies in full with its obligations under
26 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
27 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
28 that are under common ownership, directors, officers, employees, agents, shareholders,

1 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
2 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
3 retailers as well as franchisees, suppliers, licensors and licensees (“Downstream Defendant
4 Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to
5 1,4-Dioxane contained in Covered Products that were sold by Settling Defendant prior to the
6 Effective Date. For purposes hereof, Defendant Releasees and Downstream Defendant Releasees
7 shall be collectively referred to as “Releasees”.

8 7.2 Provided that Settling Defendant complies in full with its obligations under
9 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives, covenants not to
10 sue, and forever discharges any and all claims against Settling Defendant and all Releasees
11 arising from any violation of Proposition 65 or any other statutory or common law claims that
12 have been or could have been asserted by CEH individually regarding the failure to warn about
13 exposure to 1,4-Dioxane contained in Covered Products (i) sold by Settling Defendant prior to the
14 Compliance Date or (ii) which Settling Defendant purchased prior to the Effective Date.

15 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant
16 and Defendant Releasees shall constitute compliance with Proposition 65 by Settling Defendant,
17 Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to
18 warn about 1,4-Dioxane in Covered Products manufactured, distributed, or sold by Settling
19 Defendant after the Effective Date.

20 7.4 Nothing in this Section 7 affects CEH’s right to commence or prosecute an
21 action under Proposition 65 against any person other than Settling Defendant, Defendant
22 Releasees, or Downstream Defendant Releasees.

23 **8. NOTICE**

24 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
25 notice shall be sent by first class and electronic mail to:
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Mark N. Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2 When Settling Defendant is entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail to:

Greg Sperla
DLA Piper LLP
555 Mission Street, Suite 2400
San Francisco, CA 94105
Greg.Sperla@us.dlapiper.com

8.3 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

9. COURT APPROVAL

9.1 This Consent Judgment shall become effective upon entry by the Court. CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this Consent Judgment.

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall never be introduced into evidence or otherwise used in any proceeding for any purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

10. GOVERNING LAW AND CONSTRUCTION

10.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

11. ATTORNEYS' FEES

11.1 Except as otherwise provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs.

11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions pursuant to law.

1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments or understandings related thereto, if any, are hereby
5 merged herein and therein. There are no warranties, representations or other agreements between
6 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
7 implied, other than those specifically referred to in this Consent Judgment have been made by any
8 Party hereto. No other agreements not specifically contained or referenced herein, oral or
9 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
10 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
11 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
12 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
15 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **13. SUCCESSORS AND ASSIGNS**

17 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
18 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
19 assigns of any of them.

20 **14. RETENTION OF JURISDICTION**

21 1.14 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

24 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
26 and execute the Consent Judgment on behalf of the Party represented and legally to bind that
27 Party.

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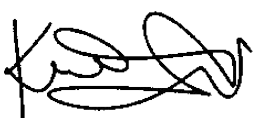
Dated: _____, 2024

Judge of the Superior Court

IT IS SO STIPULATED:

Dated: November 8, 2024

CENTER FOR ENVIRONMENTAL HEALTH



Kizzy Charles-Guzman
Chief Executive Officer

Dated: _____, 2024

ECOLAB USA, INC.

Signature

Printed Name

Title

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IT IS SO ORDERED:

Dated: _____, 2024

Judge of the Superior Court

IT IS SO STIPULATED:

Dated: _____, 2024

CENTER FOR ENVIRONMENTAL HEALTH

Kizzy Charles-Guzman
Chief Executive Officer

Dated: November 6, 2024

ECOLAB USA, INC.



Signature

Sandeen M. Boone

Printed Name

General Counsel

Title

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EXHIBIT A

Payee	Type	Amount Reformulation Level (10ppm)	Amount Optional Lower Reformulation Level (3ppm)	Deliver To
OEHHA	Penalty	\$ 6,750	\$ 3,000	OEHHA per Section 5.1.1
Center For Environmental Health	Penalty	\$ 2,250	\$ 1,000	LLG
Center For Environmental Health	ASP	\$ 6,050	\$ 2,550	LLG
Lexington Law Group	Fee and Cost	\$ 21,250	\$ 19,750	LLG
Center For Environmental Health	Fee and Cost	\$ 3,700	\$ 3,700	LLG

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